

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding:)	
)	
CITY OF HESPERIA)	
)	PERB IMPASSE
Employer,)	No. LA-IM-242-M
)	
and)	DATE ISSUED:
)	
TEAMSTERS LOCAL 1932)	September 29, 2017
)	
Union.)	

Factfinding Panel:

Impartial Chairperson:

_____ **Walter F. Daugherty**
Arbitrator/Factfinder

Employer Member:

Steven M. Berliner
Partner
Liebert Cassidy Whitmore

Union Member:

Natalie Harts
Business Agent
Teamsters Local 1932

Appearances:

For the Employer:

Adrianna E. Guzman
Attorney at Law
Liebert Cassidy Whitmore

For the Union:

Brad S. Beherns
Attorney at Law
Hayes & Ortega

BACKGROUND AND PROCEDURAL HISTORY

The City of Hesperia (“City”) is an incorporated city in the High Desert near the foot of the San Bernardino Mountain Range. The City is an important distribution and logistics hub in the Southern California Region and has some 194 budgeted positions. Teamsters Local 1932 (“Teamsters” or “Union”) is the exclusive majority representative for the some 90 employees in the more than 30 classifications that comprise the “City Yard” unit. These employees work in six City departments. It is undisputed that the City is a “public agency” within the meaning of Section 3501 (c) of the Meyers-Milias Brown Act (“MMBA”) and that the Teamsters is a “recognized employee organization” pursuant to MMBA Section 3501 (b).

Regarding the genesis of the dispute before the Factfinding Panel (“Panel”), the prior Memorandum of Understanding (“MOU”) was in effect from January 1, 2016 through December 31, 2016 (U. Ex. 4).¹ Negotiations on this MOU had concluded in March 2016.

The parties began negotiations on a successor MOU in July 2016 and continued to meet between July 2016 and April 2017. On April 17, 2017, the City presented the Teamsters with a written comprehensive Last, Best and Final Offer (“LBFO”) (C. Ex. 3). In its LBFO, the City advised that its proposal was a package proposal and that all outstanding issues were to be accepted by the Teamsters and ratified by April 25, 2017 or they would be deemed rejected. The City’s written proposal further advised that if rejected it would revert to the positions as stated in its March 29, 2017 verbal proposal and as reduced to writing on April 21, 2017 (C. Ex. 2).

¹Union and City exhibits will be referenced as “U. Ex. __” and “C. Ex. __,” respectively. Since the parties submitted various duplicate exhibits, references to such duplicate exhibits is generally made only to one source.

The Teamsters submitted a response in which it accepted eight of the nine proposals identified in the City's LBFO and requested a 4 percent salary increase rather than the 1.8 percent cost of living adjustment ("COLA") that the City had offered (C. Ex. 4). The City informed the Teamsters on May 4, 2017 that the 1.8 percent COLA was its final offer; the Teamsters declared impasse, requesting factfinding with the California Public Employee Relations Board ("PERB") on May 18, 2017.

By letter dated June 20, 2017 from the PERB, the undersigned was advised that he had been selected by the parties to chair the Factfinding Panel. Steven M. Berliner was designated as the City's Panel Member and the Union selected Natalie Harts as its Panel Member.

At the request of the Chairperson, the parties waived the statutory time limits for the hearing and the completion of the factfinding process. A hearing was held on August 22, 2017 at the Hesperia city hall at which both parties appeared and were afforded full opportunity to present evidence and offer argument. The presentations of the parties' respective proposals were made in a "point – counterpoint" fashion, with each party having the opportunity to present and explain its proposals and respond to the other party's proposals. Following the completion of the parties' presentations, the Chairperson at the request of both parties attempted to mediate a settlement. These efforts were unsuccessful. The Panel then met in a brief executive session to discuss the preparation and distribution of the Chairperson's draft report.

On September 15, 2017, the Chairperson by e-mail forwarded copies of his draft Report and Recommendations to the Panel Members for their review. The Panel Members were given two weeks from receipt of this draft by which to submit any concurring and/or dissenting opinions. Any such opinions timely submitted are attached.

RELEVANT STATUTORY PROVISIONS

With respect to the Panel's deliberations, the Meyers-Milias-Brown Act at §3505.4. (d) states:

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

ISSUES AND RECOMMENDATIONS

As of the factfinding hearing nine issues were outstanding between the parties. However, the parties had reached tentative agreement on eight of these issues, with Article 10, Salary Ranges, being the issue that caused the deadlock to persist into the factfinding process. At the hearing, it was agreed that evidence and argument would be presented solely on the salary issue as resolution of this single issue would ostensibly lead to a total and complete agreement.

The parties' respective positions on salary increases are clear and their differences are readily apparent. The City's salary offer under consideration is its offer made prior to its LBFO rejected by the Union. This offer is for a cost of living increase based on the All Urban Consumers (Area: Los Angeles, Riverside, Orange County) annualized CPI from February 2016

to February 2017 of 1.8 percent, effective the first full pay period after July 1, 2017 (C. Ex. 2).²

In its written response to the City's LBFO, the Union proposed an across-the-board salary increase of either 4 percent or 3 percent plus a match of the 401A plan given to the general non-represented employees (U. Ex. 2).³ This increase is to be effective with the pay period starting March 18, 2017 and ending March 31, 2017 to be paid April 6, 2017 (*Ibid.*)

In considering the relevant statutory factors that guide the recommendations of the Panel, it is noted that both parties emphasized the CPI and the bargaining unit's historical salary movement as related to changes in the CPI. The City's data shows that with the implementation of its 1.8 percent salary offer the wages of the bargaining unit employees have moved in lockstep with the annualized cumulative CPI increase beginning with the July 2007 wage increase (C. Ex. 5). The data supplied by the Union, however, shows that for the period commencing with the July 1, 2010 5 percent salary reduction through July 1, 2016 (the implementation of the negotiated 3.9 percent CPI and COLA increase) bargaining unit wages have fallen some 6.3 percent behind the CPI movement for this period (U. Ex. 3).⁴ The Union's data further demonstrates that bargaining unit employees hired after July 1, 2013 have seen wage increases, even when the 1.625 percent CalPERS deduction is considered, some 2 percent greater than the comparable CPI movement (*Ibid.*). Thus, to some extent the history of the economic position of

²The City's rejected LBFO proposed that the 1.8 percent increase would be effective the pay period beginning April 29, 2017 and ending May 13, 2017 to be paid in the pay check dated May 18, 2017 (C. Ex. 3).

³This 3 percent plus the 401A match option was not discussed nor explored during the factfinding.

⁴According to the Union's data, approximately 6 percent is attributable to the two increases in employee CalPERS contributions. The City's data does not include these increases.

the bargaining unit employees depends on the specific period under consideration, their hire date with the City, and the impact of the increased CalPERS contributions.

The Chairperson notes the City's contention that the parties have historically agreed to cost of living adjustments ("COLA") consistent with the annualized change in the CPI from February of one year to February of the next year. However, as will be discussed below, the Chairperson believes that under all the relevant circumstances here a change in this historic pattern or approach is appropriate.

Both parties supplied data concerning wage comparisons with other purported comparable agencies. In such regard, the Union submitted this information for the cities of Ontario, Rancho Cucamonga, and Fontana (U. Ex. 8 through U. Ex. 12). This information was culled from the Transparent California website and lists the actual wages paid to the employees in these agencies in the classifications comparable to the bargaining unit classifications. As to the 2016 base pay averages, the City of Hesperia employees lag behind those of the other three agencies by a range of some 4.3 to 40.8 percent. While acknowledging the demonstrated gaps, the salary information from the Transparent California website shows the actual wages paid these employees rather than the actual classification salary ranges. These pay differentials will be skewed high if a large proportion of the employees are at or near the top step of their respective salary range and, conversely, the numbers are skewed low if most of the employees are new to the agency. Thus, as far as comparing respective salary ranges for comparable job classifications, the utility of this information is limited.

The City furnished "comparable agency salary schedules" for eight purported comparable agencies, including the three agencies, Ontario, Rancho Cucamonga, and Fontana, for which the

Union had submitted the salary data discussed above (C. Ex. 10).⁵ The Chairperson's review of the City-supplied data for the six classifications listed in the City's Power Point Presentation (C. Ex. 1, p. 11) as well as a random review of the classification salary data from the eight public agencies with the ostensibly comparable City classifications shows that the first step salary rates for many of these City classifications compare favorably with their counterpart classifications (C. Ex. 10). In any event, the Chairperson is not persuaded that the salary ranges for the Teamsters represented classes lag so behind the salary ranges for these other agencies such that "market based" salary increases are warranted. In such regard, it is noted, as pointed out by the City, that it has experienced no problems in retention or recruiting for bargaining unit positions. Although retention/recruitment issues are not specifically identified in the PERB list of factors to be considered in the factfinding process, the Chairperson believes they are contemplated in the "any other facts" criterion. That the City has no apparent recruitment or retention problems comprises some evidence suggesting that the wages paid to the bargaining unit employees are comparable with those of other agencies.

In returning to the CPI as an element of the wage dispute at issue, the Chairperson again notes that when the parties have negotiated wage increases premised on movement in the CPI the period utilized has been from February of one year to February of the next.⁶ The Chairperson, however, is of the opinion that the extant situation warrants a change in this historical practice. In such regard, it is emphasized that the proposed term of the successor MOU is for one year

⁵This data included classifications not in the Teamsters bargaining unit.

⁶Review of the negotiated wage history shows increases have been made other than cost of living adjustments based on changes in the CPI.

with a December 31, 2017 expiration date, that negotiations on a subsequent successor MOU will commence shortly, that this impasse has extended into some 75 percent of the effective term of the MOU under negotiations, and that the bargaining unit employees last received a salary increase on July 1, 2016. The confluence of these factors persuades the Chairperson that the reported change in the CPI from July 2016 to July 2017 should be used as the basis for the CPI adjustment. For the diminution in the purchasing power since the bargaining unit employees last wage increase is quantified by the change in the relevant CPI index. This change as reported by the U.S. Bureau of Labor Statistics in the relevant Consumer Price Index was 2.5 percent (U. Ex. 6). As such, it is the Chairperson's recommendation that the bargaining unit employees receive a 2.5 percent wage increase as a COLA adjustment effective retroactive to July 1, 2017. It should be noted that the increase should not be viewed in isolation, for the parties have reached tentative agreement on a 10 percent increase in the City's contribution to the health insurance plans.

As to the interests and welfare of the public and the financial ability of the City (PERB criterion 4), it appears that the City's position is focused on its determinations where and how its available funds should be allocated and the fund reserve levels it elects to maintain. The information prepared by the City shows that its proposed 1.8 percent wage increase amounts to an increase of some \$94,944 over the term of the one year MOU (C. Ex. 1, p. 17). It therefore appears that the recommended 2.5 percent wage increase would impose an additional financial obligation of about \$38,000 more than the City's wage offer. Review of the budget information proffered during the hearing suggests that this additional increase could be absorbed by the three separate City funding sources (General Fund, Water Operating Fund, Streets Maintenance Fund)

for bargaining unit employees with minimal impact on these funds (C. Ex. 1, pp. 18-21, C. Ex. 10).

For the reasons stated above, the Chairperson recommends that the parties agree to a 2.5 percent wage increase retroactive to July 1, 2017 and that the tentative agreements reached on the other eight outstanding issues be incorporated into the terms of the MOU under negotiations.

ISSUES AND RECOMMENDATIONS

Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

_____ Concur

_____ Dissent

_____ Concur in Part

_____ Dissent in Part

For the Union:

_____ Concur

_____ Dissent

_____ Concur in Part

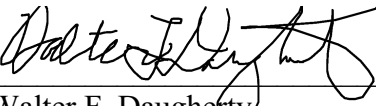
_____ Dissent in Part

Report Attached: _____

Report Attached: _____

Steven M. Berliner
Employer Panel Member

Natalie Harts
Union Panel Member



Walter F. Daugherty
Chairperson

for bargaining unit employees with minimal impact on these funds (C. Ex. 1, pp. 18-21, C. Ex. 10).

For the reasons stated above, the Chairperson recommends that the parties agree to a 2.5 percent wage increase retroactive to July 1, 2017 and that the tentative agreements reached on the other eight outstanding issues be incorporated into the terms of the MOU under negotiations.

ISSUES AND RECOMMENDATIONS

Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

☐ Concur

☐ Dissent

☐ Concur in Part

☐ Dissent in Part

For the Union:

☒ Concur

☐ Dissent


☐ Concur in Part

☐ Dissent in Part

Report Attached: ☐

Report Attached: ☐

Steven M. Berliner
Employer Panel Member


Natalie Harts
Union Panel Member

Walter F. Daugherty
Chairperson

for bargaining unit employees with minimal impact on these funds (C. Ex. 1, pp. 18-21, C. Ex. 10).

For the reasons stated above, the Chairperson recommends that the parties agree to a 2.5 percent wage increase retroactive to July 1, 2017 and that the tentative agreements reached on the other eight outstanding issues be incorporated into the terms of the MOU under negotiations.

ISSUES AND RECOMMENDATIONS

Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

_____ Concur

_____ Dissent

X Concur in Part

X Dissent in Part

For the Union:

_____ Concur

_____ Dissent

_____ Concur in Part

_____ Dissent in Part

Report Attached: X

Report Attached: _____


Steven M. Berliner
Employer Panel Member

Natalie Harts
Union Panel Member

Walter F. Daugherty
Chairperson

Steven M. Berliner, Bar No. 142835
sberliner@lcwlegal.com
LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
6033 West Century Boulevard, 5th Floor
Los Angeles, California 90045
Telephone: 310.981.2000
Facsimile: 310.337.0837

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding:

THE CITY OF HESPERIA,

Employer,

and

TEAMSTERS LOCAL 1932,

Union.

PERB Impasse No.: LA-IM-242-M

**CITY OF HESPERIA'S PANEL MEMBER
STEVEN M. BERLINER'S CONCURRENCE
AND DISSENT TO FACTFINDING REPORT
AND RECOMMENDATIONS OF CHAIRMAN
WALTER DAUGHERTY**

I am in agreement with the description of the negotiations history of the parties and their respective positions set forth in the Factfinding Report ("Report") of Chairman Walter Daugherty, and concur in that part of the Report. However, I dissent to the recommendation made by the Chairman to resolve the impasse for the reasons set forth below.

DISSENT TO RECOMMENDATION

After months of negotiations for a successor one year Memorandum of Understanding (MOU), the City of Hesperia (City) and Teamsters Local 1932 (Teamsters) found themselves at impasse. Teamsters requested factfinding, and a hearing was held on August 22, 2017.

The Chairman accurately describes the one issue that remained in dispute: Teamsters demanded an across the board 4% salary increase retroactive to the March 18-March 31, 2017 pay period; whereas the City proposed a 1.8% increase retroactive to the first full pay period after July 1, 2017.

1 The Chairman recommends a 2.5% across the board increase effective July 1, 2017. I
2 have three (3) issues with the recommendation.

- 3 1. The undisputed facts and evidence do not support either a 2.5% increase nor a July 1,
4 2017 effective date;
- 5 2. The 2.5% recommendation is based on an arbitrary comparison of CPI in July 2017, to
6 the CPI in July 2016, which is contrary to the parties' longstanding practice and much
7 more volatile than the practice of comparing inflation over an entire 12 month period;
8 and
- 9 3. Using July as the month to make CPI calculations is contrary to the parties'
10 longstanding practice, was never suggested by the parties, and would prevent the City
11 from accurately determining its annual budget.

12 **1. The Undisputed Facts And Evidence Do Not Support A 2.5% Increase**

13 While the Chairman acknowledges that the City's proposal is based on the parties' long-
14 term formula for determining salary increases (annualized change in the CPI from one February
15 to the next), he nonetheless recommends a break from that practice based on the "relevant
16 circumstances." (Report, p. 6).

17 The evidence, however, fully supports the City's 1.8% proposal. The City does not have a
18 recruitment or retention problem with Teamsters represented positions. The Chairman recognizes
19 that fact. (Report, p. 7). He also finds that market based salary increases are not warranted.
20 (Report, p. 7). The only factors the Chairman cites for his recommendation is that impasse has
21 extended into 75% of the effective term of the MOU under negotiation and that negotiations for a
22 subsequent MOU will commence shortly. (Report, p. 8). Neither of these are factors listed in the
23 factfinding statute as consideration for the panel, nor are they relevant.

24 First, labor negotiations require give and take on both sides. It requires both parties to
25 determine their priorities and trade less significant issues in order to achieve as much of the
26 significant changes as they can. One of the key issues in any negotiation is timing of changes to
27 terms and conditions of employment. When discussing salary increases, timing is especially
28 significant. Retroactivity of an increase back to a date prior to executing the MOU is a valuable

1 commodity and usually is not automatically given. If a salary increase is proposed, one of the
2 factors an employee group must consider is whether the additional increase that they hope to get
3 will be sufficient to warrant foregoing any increase for months. The Chairman's recommendation
4 takes all the risk out of going to impasse and changes the fundamental dynamics of the bargaining
5 process. The Chairman's recommendation has the effect of encouraging declaration of impasse
6 over negotiating to an agreement, by assuming retroactivity. It will make it harder, if not
7 impossible, for the parties to reach an agreement and avoid impasse in the future, as the risks
8 inherent in declaring impasse are eliminated. Teamsters' invocation of impasse and the resulting
9 elongation of the process is not a justifiable basis to recommend a change in the parties' practice.

10 Second, the fact that negotiations have been ongoing to the point that even with an
11 agreement, the parties will soon be negotiating the next contract, does not support a larger
12 increase than the City proposed. Rather, this fact supports adhering to the parties' practice of
13 calculating salary increases. The Teamsters will shortly have another opportunity to negotiate
14 with the City for any of their demands not received here. There is no justification for changing
15 the parties' longstanding salary calculation practice in order to resolve this short-term impasse.

16 The Chairman also finds that the additional cost of his recommendation over the City's
17 proposal (approximately \$38,000) can be absorbed by three separate funds (General Fund, Water
18 Operating Fund, and Streets Maintenance Fund). (Report, p. 8). This assumption is not
19 supported by the evidence. It ignores the evidence introduced by the City of crippling increases
20 in its obligation to CalPERS to pay for pension benefits. (City Exhibit 1, p. 10). Those increases
21 will continue for many years. A higher salary increase will only exacerbate the problem of
22 increasing CalPERS costs. Moreover, the Water Operating Fund, for instance, is projected to be
23 in deficit for the 2017-2018 fiscal year. (City Exhibit 1, p. 20). The additional costs are not
24 easily absorbed by the City.

25 //

26 //

27 //

28 //

1 **2. The 2.5% Recommendation Is Based On An Arbitrary Comparison Of CPI In**
2 **July 2017 To CPI In July 2016, Which Is Contrary To The Parties' Longstanding**
3 **Practice And Much More Volatile Than The Practice Of Comparing Inflation**
4 **Over An Entire 12 Month Period**

5 The parties' longstanding practice is an annualized comparison of CPI from February of
6 one year to February of the next. (Report, p. 7). The Chairman recommends using July as the
7 comparison month rather than looking at inflation on an annualized basis. Annualizing CPI over
8 12 months reduces volatility in the CPI calculations, and is in the best interest of the City and
9 Teamsters. Here, the July to July comparison results in a 2.5% CPI change. This works to
10 Teamsters' advantage here, as the less volatile annualized July to July rate is 2.2%. It could work
11 to Teamsters' disadvantage in the future. There is no compelling rationale to change the
12 longstanding practice of calculating CPI on an annualized basis. Consequently, the City's
13 proposal of 1.8% based on an annualized February through February calculation is the most
14 appropriate for both of the parties.

15 **3. Using July As The Month To Make CPI Calculations Is Contrary To The**
16 **Parties' Longstanding Practice, Was Never Suggested By The Parties, And**
17 **Would Prevent The City From Accurately Determining Its Annual Budget**

18 The parties have never used July as the month for calculating CPI and salary increases.
19 Teamsters did not propose using July nor did Teamsters propose any month other than February.
20 The Chairman picked July because the Teamsters' members received a salary increase in July
21 2016. (Report, p. 8). That fact does not support changing the practice. The 2016 salary increase,
22 while effective in July 2016, was still based on a calculation done on the basis of annualized CPI
23 for the February 2015 through February 2016 calculation. (City Exhibit 6).

24 In addition, the City creates its annual budget in the spring. Using February as the month
25 for the calculation allows the City to timely prepare its annual budget. The City would be unable
26 to prepare its budget timely if July was the month used. (See Teamsters' Exhibit 18, p. iv, which
27 is the City's 2017-2018 budget and which shows that it was adopted in June 2017.)

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For all the foregoing reasons, I dissent to the Chairman's recommendation. The City's salary proposal was calculated according to the City's long-term practice, and remains the most appropriate result in this matter.

Dated: September 29, 2017

LIEBERT CASSIDY WHITMORE

By: 
Steven M. Berliner